

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROBERT GONZALES, individually,
and by and through his next friends and
guardians, David and Christina Romero,

Plaintiff,

v.

CV 09-0021 JCH/GBW

MIKE MARQUEZ, et al.,

Defendants.

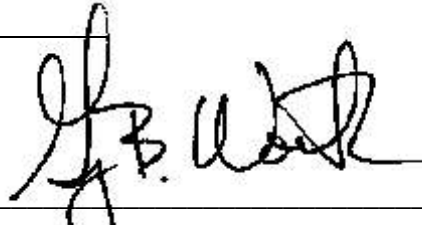
ORDER GRANTING PLAINTIFF'S MOTION
FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

THIS MATTER is before the Court on Plaintiff's Motion for Leave to File First Amended Complaint for Damages, filed on December 8, 2009.

Plaintiff seeks permission to amend pursuant to Rule 15(a) which commands that the "court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a). "Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of the amendment." *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir.1993). Having failed to file any response to the Motion, Defendants have not established any of these justifications for denial of the motion. In fact, the failure to file a response constitutes consent to grant the motion. D.N.M.LR-Civ.

7.1(b). Therefore, the Motion for Leave to File First Amended Complaint for Damages shall be granted. Plaintiff is directed to file the amended complaint which was attached to his motion as an exhibit.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'G.B. Wormuth', is written over a horizontal line.

GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE

A true copy of this order was served on the date of entry--via mail or electronic means--to counsel of record and any *pro se* party as they are shown on the Court's docket.